

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Alain H. CURAUDEAU et al.

Serial No.: 10/588,571

Filing Date: February 4, 2005 (Int'l.)

For: PHOTODYNAMIC THERAPY FOR THE
TREATMENT OF ACNE

Confirmation No.: 8305

Examiner: Not Yet Assigned

Art Unit: Not Yet Assigned

RENEWED PETITION UNDER 37 C.F.R. § 1.47(a)

MAIL STOP PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

This is in response to a Decision under 37 C.F.R. § 1.47(a) mailed 9 July 2009 and setting a response date of 9 September 2009. The Decision dismissed a Petition to File a Declaration on Behalf of the Non-Signing Inventor which was received at the USPTO on 14 January 2008 and also dismissed a renewed Petition under this rule filed 15 September 2008.

In the current communication, to which this forms a response, the Office

1. acknowledges the authorization to charge the petition fee to deposit account No. 03-1952;

2. objects to the proofs submitted that the inventor refuses to execute the application or cannot be reached after diligent effort;
3. states that a Statement of Last Known Address of the Inventor was lacking; and
4. states that an oath or declaration by the other inventors is deficient.

With regard to item 3, the last known address of the non-signing inventor is 638 East 21st Avenue, Vancouver BC, V5V 1R7, Canada.

With respect to item 4, it is understood from a telephone conversation with Richard Cole of the U.S. PTO that the declarations filed with the renewed Petition on 5 September 2008 did indeed comply with the requirements. Only that submitted with the original Petition was properly considered deficient.

Therefore, only item 2 remains to be addressed.

Enclosed herewith are unredacted copies of the complete e-mail correspondence between Vandhana Misri, the Intellectual Property Administrator for the assignee, QLT, Inc., and Mark Curry in regard to executing the declaration in this matter. The pages are numbered for ease of reference. There are no e-mails in this correspondence other than those enclosed.

The enclosed e-mail string is somewhat difficult to follow because tracking of previous e-mails results in some duplication. The e-mails on pages 1 and 2 of the attached show an original e-mail sent by Ms. Misri on 20 September 2007 at 1:18 p.m. and Dr. Curry's response on 21 September 2007 at 9:24 a.m. In this e-mail, Dr. Curry clearly refuses to entertain complying with Ms. Misri's request. Ms. Misri responded on 3 October 2007 at 3:18 p.m. indicating that electronic additional versions of the relevant documents were attached and offering to arrange for convenient notarization.

As Ms. Misri received no reply, she sent an additional e-mail on 11 October 2007 at 5:51 p.m. with revised documents that did not require notarization, shown on page 6, which contains an additional copy of the e-mail sent on 3 October 2007.

As no reply was received by Ms. Misri from Dr. Curry, an additional e-mail shown on page 9 was sent on 22 October 2007 at 3:34 p.m. again asking for execution of the attached documents. Again, no reply was received.

Shown on page 12 is a subsequent e-mail sent by Ms. Misri to Dr. Curry on 7 November 2007 at 9:46 a.m., again enclosing copies of the application and the declaration and assignment. Page 16 of the attachment appears to be an automated confirmation of delivery response. An additional e-mail was sent on 4 December 2007 at 11:28 a.m., and, as shown on page 21, another automated response confirming delivery was received. Another e-mail was then sent at 11:30 a.m. on the same day again receiving the same type of automated notification (pages 22-26).

It should be evident from the enclosed that Dr. Curry has refused to sign the declaration repeatedly submitted to him along with a copy of the application.

Accordingly, reconsideration of the Petition and examination of the application on the basis of the papers as filed is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required by this paper or credit any overpayment to **Deposit Account No. 03-1952.**

The enclosed papers are believed to be in compliance with 37 C.F.R. 1.47(a).

Petitioners request the Commissioner to grant this petition and to perfect the filing of this application by acceptance of the accompanying documents.

Respectfully submitted,

Dated: September 9, 2009

By: / Kate H. Murashige /
Kate H. Murashige
Registration No.: 29,959
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
Telephone: (858) 720-5112
Facsimile: (858) 720-5125